

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA, §
§
v. § CRIMINAL NO. 3:14-CR-384-B-1
§
MARION PRUITT, #36078-177` §
Defendant. §

ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made findings, conclusions and a recommendation in this case. No objections were filed. The District Court reviewed the proposed findings, conclusions and recommendation for plain error. Finding none, the Court ACCEPTS the Findings, Conclusions and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that Defendant's motion to modify conditions of supervised release is DENIED and that his motion to modify restitution payment, construed as a habeas corpus petition under 28 U.S.C. § 2241, is DISMISSED WITHOUT PREJUDICE for want of jurisdiction. Crim. Doc. 52.

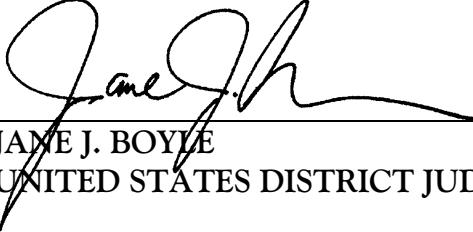
Defendant's May 3, 2022 *Request for Restitution Repayment Schedule* (Crim. Doc. 56) is DENIED WITHOUT PREJUDICE for the reasons set out in the Magistrate Judge's recommendation, namely that the Court lacks jurisdiction over his motion, even if construed as a habeas petition.

The Clerk of the Court is DIRECTED to open for statistical purposes a new habeas case under 28 U.S.C. § 2241 (nature of suit 530 directly assigned to the District Judge and Magistrate Judge assigned to the criminal case) based on Defendant's motions (Crim. Doc. 52 and 56), and to

close the same on the basis of this order.

The Court prospectively certifies that any appeal of this order would not be taken in good faith. See 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). In support of this finding, the Court adopts and incorporates by reference the magistrate judge's findings, conclusions and recommendation. See *Baugh v. Taylor*, 117 F.3d 197, 202 n.21 (5th Cir. 1997). Based on the findings, the Court finds that any appeal of this order would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). In the event of an appeal, Defendant may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. See *Baugh*, 117 F.3d at 202; FED. R. APP. P. 24(a)(5).¹

SO ORDERED this 6th day of May, 2022.



JANE J. BOYLE
UNITED STATES DISTRICT JUDGE

¹Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order. A timely notice of appeal must be filed even if the district court certifies an appeal as not taken in good faith.